Previous references.

1903-04

(Court)

File No. 153 of 03

Serial Nos. 1-7

Later references.

Court 800 of 04/05

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-7

Part B. for

SUBJECT.

Appeal against the order of the acquittal of the accused one Venkatasubbaiah passed by the Assistant Sessions Judge at Hassan in Sessions Case No 7 of 03-04.

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Serial No 3. From the Registrar Chief Court -
No 6616 of 26th April 1904
283
Forwarding the record in Sessions Case
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sions Judge Nagapattinam -

Serial No 4 To the Govt Advocate No 2316 of 4/5/04
Forwarding the petition & requesting to
give his opinion together with the grounds
therefor, as to whether an appeal may be filed
in the Chief Court of Judicature against
the order of the acquittal of the accused
person passed by the Asst Sessions Judge
Nagapattinam.

Serial No 5 From the Govt Advocate No 208 of 19/5/04
stating that the case is a fit one for
appeal giving reasons

Serial No 6 To the Government Advocate
District Magistrate Nagapattinam No 2616-16 of 2/6/04
Directing the Government Advocate
to file an appeal in the Chief Court
against the order of acquittal of the
accused Venkatasubbaiah in the
case above referred to.

Serial No 7. To the Registrar Chief Court
No 2617 of 2-6-04
Returning the records in Sessions
Case No 7 of 03/04 on the file of the
Asst Sessions Judge Nagapattinam

Office Note

File No. 63 of 1904. Branch Judicial

Subject. Petition No. 2162 dated the 21st March 1904 from Bhutter Ramanna of Arkalgud, praying that the Govt. Advocate may be directed to file an appeal in the Chief Court against the order of acquittal of the accused person passed by the Assistant Sessions Judge, Hassan in Sessions case No. 7 of 1903-04 on his file.

The Deputy Secretary's remarks on the Petition:—

"After perusing the records recently received, I think the Assistant Sessions Judge's judgment (to the effect that the so called will was got up by the petitioner, & was not really executed by the deceased Viswesvara & is quite correct and amply supported by the evidence.

Please draft an endorsement to petitioner that Govt see no sufficient grounds for filing an appeal to the Chief Court.

(A ref. to Govt Advocate is unnecessary)" (Sd) K. S. C. 29-4

The 1st Councillor's remarks "The draft endorsement prepared by the Office as above dire

I have discussed the case with the Deputy Secretary. Before recording my views I would suggest that the Govt Advocate be first consulted.

(Sd) C S 2/5/74

The Govt Advocate was accordingly consulted and in reply he states that for reasons given he is of opinion, the case is a fit one for appeal to the Chief Court.

Submitted for orders with a draft for appl

(An endorsement will be given to the Petr. if any, after appln for the above draft).

21/5/74

x Letter No 208 dated 19th May 74

In my note, vide next page.

23.5.74

The whole case turns on two points:

1st. Whether the deceased Visveswarayya did or did not execute a will.

2nd. Whether the document subsequently produced by the accused Venkatasubbayya (Exhibit A) was or was not "the original will," i.e. the document really executed, or originally concocted by others with intent to make it appear that it was executed, by Visveswarayya.

On the first point, the Asstt. Sessions Judge has found that Visveswarayya did not execute a will. I was at first inclined to accept fully the train of argument leading to that conclusion. But on further consideration of the evidence, I have modified my opinion so far as to admit that the combined testimony of the attesting withesses (if believed) and the terms of the admission by the Accused in his statement before the General Asstt. Commr. (Mr Chandy), raise a certain degree of presumption in favour of the allegation that there existed a document other than Exhibit A. There are however circumstances rebutting the allegation that that document was executed by Visveswarayya; the chief being the fact that he was in too hopeless a condition for several days before his death to be able to dictate an elaborate will of three pages on the day before his demise. The testimony of Ramanna (father-in-law of the deceased and grandfather of the adopted boy) and of Hebbarayya (father of the adopted boy) must be received with caution, as they are clearly interested in asserting that a document by which they stand to gain so much is genuine.

The next question is, Did the accused substitute a forged sheet for the first of the two half-sheets of which the "original will" consisted ?

The answer depends on the degree of credit we are disposed to attach to the secondary evidence furnished by Ramanna and the other attesting witnesses. Oral testimony as to the contents of missing documents must always be received with caution; and due deduction made for possible laches of memory and even conscious misrepresentations.

The presumption from intrinsic evidence (i.e from a consideration of the contents of Exhibit A) does not amount to much. This document, too, affirms the adoption, and leaves the bulk of the property to the adopted boy, though as regards the division of the three Shanbogi scales and one or two other particulars a tendency to favour the natural relations of the "testator" appears,-- which is by no means strange or unnatural.

Lastly, the Accused's conduct in hastily getting back the document from the Sub-Registrar, while no doubt suspicious, may have been due simply to the guilty consciousness that the "original will" was itself a forgery, and to the fear of unpleasant consequences if the Accused proceeded with its registration. His hesitation to produce Exhibit A may be similarly explained by a desire to suppress the evidences of a criminal conspiracy in which he was involved.

The Government Advocate's inferences, though expressed in a syllogistic form, are not to my mind convincing. He thinks that, because the Asstt. Sessions Judge found "that the whole will was a forgery," i.e. that no will was in truth executed

* This is not the findi as expressed in the Petitio

at all, therefore the Accused ought to have been convicted for having made use of a forged document. In the first place, the Accused did not "make use" of a forged document: he merely tried to get one registered, but did not proceed with his design. Secondly, the question before the Court was, Did the Accused, by altering a pre-existing true will, commit forgery ~~[illegible]~~ ? Whether or not the original document was itself a forged one was not the point directly involved in the trial. In a trial i.e. as the fact charged, turning upon the fact that [illegible] did not execute any will at all, the persons to be placed in the dock must have included Ramanna, Hebbarayya, and whoever else was concerned in getting up a rebelling the forgery. ~~Surely, how can we reasonably expect a conviction on a charge that a document which is not produced and which, for that matter, may not have been executed at all, was a forgery ?~~

For the reasons set forth I am not quite sanguine that an appeal to the Chief Court ~~is likely to~~ will result in the conviction of the Accused. But at the same time, having regard to the importance of the case and the elements of doubt involved, the advice of the Government Advocate may perhaps be accepted, and an appeal filed.

A draft is submitted for approval.

M Chandrasekhara
23.5.04

To The Dewan thro' the Ist Councillor.

460
5-5-04
copy

It is not denied that the deceased executed a will though before his death. The accused took charge of that document for the purpose of

getting it registered. He dies prov-
- ing a will before the
Sub Registrar but some
time afterwards withdrew
it under circumstances
extremely suspicious. Ultimately
on being required to give
up the document, he
produced before the
Chandy Exhibit-E. alleging
that that was the will left by
the deceased. The Counsel
asserted that the real will
had been tampered with.
In support of this assertion
there is a mass of evidence
direct and presumptive
The question for Mr. Judge's
decision was not whether
there was a will or not but
whether Exhibit-E was the
real will. I am afraid
he has wiped the real issue.
I had doubts as to the
correctness of the action pro-
-posed to be taken by the
Secretariat. The Govt Advocate
was thereupon consulted
with the result that he has
given it as his opinion that
the case is a fit one for
appeal. I agree with him.
Draft approved. Q. 26/5/04

17982/28.5.04

28/5/04

The Dewans remarks on the draft order sanctioning the appeal :- 7

" I am rather disposed to think that an appeal is not quite called for in this case, but do not want to differ from the Councillor. An appeal may be tried"

(Sd) P. N. K.
29-V-04

" Issue draft; & then copy the above remark in Continuation of notes & submit to 1st Councillor for perusal"

(Sd) K. S. C
31-5-04

Issued and Submitted as directed

4/6/04 No. 2615-16 dt 2/6/04

Seen
7-6-04

6-6-04

7/6/04

2 Rec'd 8

Not issued

No.

MYSORE DEWAN'S OFFICE,

JUDICIAL DEPARTMENT,

The 190

ENDORSEMENT GRANTED TO Chutter Ramanna of Arkalgud

in reply to his Petition Registered No. 2162 dated the 21st Mar 1904, praying that the Govt Advocate may be directed to ~~for~~ file an appeal in the Chief Court of Mysore against the order of acquittal of the licensed person passed by the Assistant Sessions Judge, Hassan in Sessions Case No. 7 of 1903-04 on his file

Petitioner is informed that Government see no ~~[illegible]~~ sufficient grounds for filing an appeal to the Chief Court.

2. The enclosures to the Petition are returned.

By Order,

Secretary

Subd to the Dewan through the 1st Clk Please see the Dy Secy's Note on the Petn Clk 30/4/04

I have discussed the case with the Dy Secy. Before recording my own views I would suggest that the Govt Advocate be first consulted. 2/5/04. C

Please consult Govt Advocate Clk 3/5/04

2-5-04 30/4/04

1904 g 15-4

No. 2162

Name of Petitioner: Colvutter Ramanna

Village: Arkalgood

Taluk:

District: Hassan

Date of Arzi:

Date of Receipt: 21-3-04

Date of Disposal:

No. of Enclosure:

ABSTRACT

Complains against the judgment of Assistant Sessions Court Hassan, acquitting the accused Peter Venkatasubbiah who committed forgery in the will executed by the petitioner's son-in-law and states that the decision of the Assistant Sessions Judge is wrong & has occasioned a thorough failure of justice. Prays that Court may peruse all the records and order Court to advocate to file an

MGCPB—5,000—10-11-02

in question -

Copies of judgment & assessors
Comments are enclosed.

Cul
2/4/04

Mysore Government
General and Revenue Secretariat
Petition Department
Regd No. 2162R
Date 21-3-1904

To

The Secretary to
Govt. and Revenue Department
Government of His Highness
the Maharaja of Mysore.

2162
17 Enclosures

The humble petition of Chuttee Ramanna
a resident of Arkalgud, Hassan District
most respectfully sheweth:-

Petitioner		Counter-petitioner
Chuttee Ramanna	to	Venkatasubbayya
Land holder		Shanbogue Gumasth
		of Waddaraha Ry
		Arkalgud Taluk.

That petitioner Son-in-law
Viswesaraayya who was a Stamp
Vendor at Chicanayer having lem-
porarily come to his native place at
Arkalgud in September 1902 expired
at the same place on the 9th of September
That as the said Viswesaraayya was
issueless he adopted his wife's Sister's
son Venkata Krishnayya and executed
a deed to this effect and a deed about

the disposition of his property and ex-
hall appointing petitioner his executor under
the will

That the said will was written by Counter
petitioner who is the testator's uterine
brother at the testator's dictation in
which the counter petitioner was empower-
-ed to present the document for regist-
tion and otherwise secure the same.

That the Sub Registrar of Nekalapud
having refused to go to petitioner's
sheds for fear of plague, during the
lifetime of the testator, the will was
presented for registration by the counter
petitioner on the 13th September 1902 and
the receipt given to him in accordance
with law was given to the possession
of the petitioner by the counter petitioner

That in the meantime one Venkata
-pathayya (Sub Overseer) a cousin of the
deceased testator having put in a petition
to the Sub Registrar, complaining that the
will was a forged document so as to
defraud him the Sub Registrar ordered
that all the attesting witnesses should
be examined on one and the same day
and then put off the enquiry and re-

for more than a month.

That during this long interval Sub Over
-Seer Venketapathayya bought the counter
petitioner and induced him to take
back the will without registration, which
news having come to petitioner, he petitioned
the Sub Registrar on the day the case was
posted for hearing, that the will should not
be returned to counter-petitioner if asked
as he has attempted to defraud the testa
tor's minor and benefit himself and
his uncle Venketapathayya above named
That though the will was in the Sub Registry
office on that date yet the Sub Registrar
under the influence of Venketapathayya
and his friend the Talukdar, endorsed
on his petition that the will was returned
on the previous date alone and that a copy
of the will could not therefore be granted.
That the petitioner subsequently demanded
counter-petitioner either to hand over the will
to his possession or to represent the same for
registration and the counter-petitioner having
declined to do so he lodges a complaint
before the District Magistrate of Hassan, &c
against the counter-petitioner for having stolen
the will. The counter-petitioner having in this
Court taken several adjournments to
produce the will produces the same after
4 months, when the petitioner found that the

and Asstt
Sessions Judge
Court

document had been materially altered by removing the first out of the two sheets of ~~which it was formed~~ paper used for the same and by re-writing another sheet and affixing it to the second sheet which contained the signature and attestation of the executant and witnesses. Petitioner having above observed this informed the same to the Magistrate, who directed petitioner to lodge a fresh complaint before the Magistrate having territorial jurisdiction and discharged counter-petitioner on the ground that he had not secreted the will in question.

That petitioner subsequently lodged a complaint of forgery before the Inquisitorial Commissioner and 1st Class Magistrate of Hassan who having held the necessary preliminary enquiry in the case committed counter-petitioner to take his trial before the Asst Sessions Judge of Hassan. The case having been tried on the 3rd Instt by the Asst Sessions Judge of Hassan the counter-petitioner was acquitted on the ground that the original document was itself a forgery and consequently ~~the~~ its alteration as complained by the petitioner though true, which is not, does not constitute forgery.

That petitioner believes that the decision of the Asstt. Sessions Judge is entirely wrong and has occassioned a thorough failure of justice. It has further given an incentive for persons of the Stamps of counter petitioner to commit heinous offences of all kinds under the belief that they may go unpunished even if they are detected in committing offences.

That petitioner having no right of appeal against the judgment of the acquittal of the Sessions Judge he ~~has only the right~~ under the provisions of the Criminal Procedure Code he has no alternative but to beg the Government to peruse the records of the case and order the Government Advocate to file an appeal against the judgment in question.

Petitioner begs to submit the following points for the kind consideration of the Government

1- Counter petitioner has not pleaded that the original will was a forged document.

2. Counter petitioner has on the contrary admitted in the criminal proceedings before Mr. Chandy (1st Class Asstt. Commr. Magistrate) between the same parties (Criminal case no 16 of 1902-03) that the deceased Visweswaraya had executed a will and that no portion of the will of Visweswara

which he then produced in Court and
a warrant issued to him was forged.

(3). The attesting witnesses have all sworn
that Viswenarayya executed a will, which
they attested at his request.

(4) The attesting witnesses distinctly swear
that the will before Court was not in the
State, two papers annexed to each other, in
which it now exists and that all the three
Jaika Shamboguas was to go the minor
adopted son and none either to counter
petitioner or to any others.

(5) The petition of Venkatapathayya dt 24/9/02
and marked exhibit (G) distinctly mentions
that the will made a mention of assigning
all the testator's property to the adoptive so

(6). The defence evidence is thoroughly contra
-dictory to one another.

(7) The will bears all signs of alteration
on the very face of it.

Petitioner begs to submit herewith the copies
of the judgment in the Lessini's case, the Magis
trate Mr. Chandy's judgment which contain
counter-petitioner's statement and the non-
authentic abe copies of the depositions of
witnesses examined in the case and prays
that they may be perused and an order
passed ordering the filing of an appeal

9th
the Judgment of acquittal passed by the last
Sessions Judge in case No 7 of 1903-04.

And that he will ever pray

Humbly begging Dranam
Sir
Your most obedient and
humble Servant

70

V

To

The Registrar,
Chief Court

Dated 20/4/04
No. 2209

Annual 602

Has the honour to request that he will be so good as to obtain & forward for reference, the entire records & in Sessions case No 7 of 1903-04 on the file of the Assistant Sessions Judge, Hasan.

By order

Jor Secretary

Recd 22/4/04

No 6616 (Records) / 283 J 1638 Bangalore 26th April 1904

From.

V. A. Rajaratna mood. Esqr:
Registrar, Chief Court of Mysore.

Serial No 3

To. L. Anantaswami Row Esqr.
Offg: Secretary to Govt:
Genl: & Rev: Depts

Sir,

With reference to your No. 2209/7 dated 20th instant I have the honor to forward the record in Sessions Case No. 7 of 1903-04 on the file of the Assistant Sessions Judge, Hassan.

I have the honor to be,
Sir,
your most obedient servant
V. Rajaratnamood
Registrar

Nilu

Secret Dept

To

The Govt Advocate
in Mysore

Dated 4th May 1904
No. 2316
J

In forwarding herewith Petition Regd No 2162 dated the 21st March 1904 received from Chutter Ramana of Arkalgud and its enclosures in original as also the records in Sessions case No 7 of 1903-04 on the file of the Assistant Sessions Judge, Hassan, has the honour to request that the Govt Advocate will be so good as to favour Govt with his opinion together with the grounds therefor as to whether as prayed for by the Petitioner, an appea

Secret
6/5/04

Appeal may be filed
in the Chief Court of Mysore
against the order of acquittal
of the accused person
passed by the Assistant
Sessions judge of Hassan
in the case above referred
to.

By order

(1-8-62 Bro's order)

for Secretary

Home Dept /

No 208

Enclosure: 1 file & reply

Office of the Govt Advocate in Mysore
19th May 1904

1744

Judl. Serial No 5 From

The Government Advocate
in Mysore

To

The officiating Secretary
to the Government of
Mysore
Gen & Rev Depts.

Sir,

In reply to your letter No. 2316 Dt 4th May 1904, I have the honor to state that in my opinion it is a fit case for appeal for the following grounds;—

1. The case for prosecution is that a portion of the Will is forgery.
2. The statement of the accused before the 1st class magistrate of Mr Chandy is that the whole Will[x] is genuine.
3. The finding of the assistant Session Judge is that the whole Will[x] is forgery.
4. The finding of the assistant Session Judge supports the case for prosecution.

i.e. [illegible]

x ? Portion

5. The accused ought to have been Convicted by the assistant Session Judge as per his finding for having made use of a forged document.

The enclosures are herewith returned.

I have the honor
to be Sir,
your most obedient Servant,

S Ramaswamy

Government Advocate
in Jaffna.

Draft

16

Annal No 6

Read:—

Petition No 2162 dated the 21st March 1904 received from Chuttu Ramanna & Attakgud, praying that the Govt Advocate may be directed to file an appeal in the Chief Court against the order of acquittal of the accused person passed by the Assistant Sessions judge, Hassan in Sessions case No 7 of 1903-04.

(2) Letter No 208 dated the 6th May 1904 from the Govt Advocate in Mysore, stating that for reasons given the above is a fit case for appeal to the Chief Court.

D.2. 6. 04
No. 2615-16
J

Order thereon:—

Under Section 417 of the Code of Criminal Procedure, Regn II of 1904, Govt are

Col.
26/5/04
1847
I am rather doubtful that an appeal is not quite called for in this case but do not want to differ from the Counsel. An appeal may be filed

29.V.04

Issue copies & thereof of the above remark is under Govt's order to Govt for perusal by 31/5/04.

17

are pleased to direct the Government Advocate to file an appeal in the Chief Court against the order of acquittal of the accused Venkatramabbaya passed by the Assistant Sessions Judge, Hassan in the case referred to above.

2. The result of the appeal should be reported for the information of Govt.

23-8-04

Asstt. Secretary

To
The Govt. Advocate in Mysore, with a copy of the Sessions Judgment.
The Dt. Magte of Hassan.
The Registrar, Chief Court returning the records received with his letter No. 6616 2&3 dated the 26th April 1904.

Return depositing Docket
23-5-04

Draft

19

To.

The Registrar,
Chief Court

Dated ~~2/6/04~~ 2nd June 04

Serial No 7

No. 2617 Encl: one file

Has the honour to return herewith the records in Session case No 7 of 1903-04 on the file of the Asst. Sessions judge, Hansi received with the Registrar's letter No 6616 dated the 26th April 1904 283

By order

For Secretary

Note
This should be noted on a file and a reminder sent about the appeal on 23/5/04

Typed. 6/5/04